

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 5, 2003 at
2:35 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Trudi Schmidt (D)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 56, 2/25/2003; HJ 9, 2/25/2003
Executive Action:

HEARING ON HB 56

Sponsor: REP. BILL THOMAS, HD 93, Hobson

Proponents: Dan Anderson, Department of Public Health & Human Services (DPHHS)

Opponents: None.

Opening Statement by Sponsor:

REP. BILL THOMAS, HD 93, Hobson, said that one measure by which society was judged was by how well they cared for those who could least take care for themselves, such as the mentally ill. HB 56 was a bill that addressed procedures that must be followed to ensure that proper admission and extending residency and involuntary commitments were followed to the Montana Mental Health Nursing Care Center, in Lewistown. The center was a licensed nursing home that served people with mental illnesses that could not be cared for in private nursing homes or other community services because of their behavior problems or symptoms of mental illness. Admissions are voluntary and not court ordered, but many patients did not have the mental capacity due to dementia or other mental illnesses. The bill was a result of extensive consideration and revision of the original bill by a subcommittee that included REP. NOENNIG and REP. JENT, a representative from the Montana Advocacy Program, and the DPHHS. REP. THOMAS said he discussed the proposed changes with the director of the center in Lewistown and the director was comfortable with the changes. All applications were followed by a post trial hearing that determined the need for commitment. Page 1, Lines 28 -30 and Page 2, Lines 1-3 allowed for direct admissions to the center. This was the gatekeeper part of the bill to make certain the center was the appropriate place for the patient. Subsection 7 respected the rights of the patient that did not need the level of care provided by the center as determined by the court. Subsection 8(g) stated that the court would make the determination that the patient met the admission requirements of the center and that the superintendent had issued the written authorization for the admission. Section 2 was mostly existing law. It provided an extension of the commitment period. This was determined by the court, including the period during which the extension process had to be initiated. Also included were the appropriate persons that needed to be notified, such as the parents, or next of kin. Also described was the length of custodial time that was less than six months and ensured consideration of alternative treatments. Section 3 provided for involuntary commitments. This was followed by

existing law that described the conditions and requirements that had to be met to transfer from Montana State Hospital to the center. The proposed changes to existing law would be best understood if referred to the law that remained in the statute after the changes were adopted. **SEN. THOMAS** said he supported the process of determination of proper care and treatment of an individual. This was referred to often in the existing law presented. He said that when the proposed amendments returned from the subcommittee, he was concerned about the role or lack of role played by the parents of the patient, or the patient's guardian. He said he was reassured that the guardian still played an important role as the patient's intercessor and that this was described in other areas of the statutes. In the past, when the service of a guardian was required, occasionally the guardian would be unavailable. In other instances, the guardian was not home or unable to take on the responsibility of making heavy decisions concerning the patient's treatment. In certain cases of severe dementia, perhaps periodic review could be done very well by utilizing the services of the guardian. This would save some expense to the system, but the fact remains that the most constant defender of the individual rights of the patient lied within the right of the court. Currently the center received 30-40 admissions, extensions, or involuntary commitments a year. He said other proponents would address the finer details of the bill.

Proponents' Testimony:

Dan Anderson, DPHHS, read and submitted written testimony.
EXHIBIT (phs46a01)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON, SD 15, Bozeman, said her understanding was that pages 5-7 were struck was because it changed from making the guardian making the decision to having it done through the involuntary commitment process. **Mr. Anderson** said that was correct.

SEN. STONINGTON asked if that all happened in the Human Services subcommittee. **Mr. Anderson** said yes.

SEN. STONINGTON asked what precipitated the changes. **Mr. Anderson** said the law was not necessarily being followed. Patients had been allowed to be admitted based on the guardian's approval.

The statute says the admissions are voluntary and assumed that meant that a guardian's admission was adequate for that. However, in the guardian statute, in a different part of the law it talked about a guardian not having the right to admit to a mental health facility. When confronted with that, there had to be a solution for that to bring to the session. He said he was not aware of this being challenged, but wanted to clarify and make right.

SEN. STONINGTON asked what the process would be for her if she were a guardian for someone who was mentally ill, who she thought should go there. Would she no longer be able to commit this person voluntarily. **Mr. Anderson** said that was correct.

SEN. STONINGTON asked if she would then have to go through a court proceeding to have it done. **Mr. Anderson** said she would have to ask the county attorney to file a commitment petition.

SEN. STONINGTON asked how that commitment related to the imminent danger issue. **Mr. Anderson** said the same criteria for commitment would have to be done. Criteria had not changed. He thought it applied well. He said it was not imminent danger in the sense of acts of commission. It included the inability to take care of self. He said that many admissions to the nursing care center were transfers from the state hospital. The authority was already in place for somebody who was involuntarily committed to the state hospital to transfer them to the nursing care center, under their existing commitment. For some, they have been recommitted them when their commitment had expired at the nursing care center. He said that was really what the process was for many.

SEN. BRENT CROMLEY, SD 9, Billings, asked for some background on what the Mental Health Nursing Care Center was. **Mr. Anderson** said the nursing care center was established in the 1950's. It was originally created for an overflow of the state hospital. In the original statute, when talking about admissions to the nursing care center, the only way to go there was to have the superintendent of the state hospital send a person. It was mostly older people who were sent there.

SEN. STONINGTON asked if this might clog the courts and what the case load was like. **Mr. Anderson** said last year there were about 38 admissions to the nursing care center of all kinds. There would be some who needed to be recommitted. He said that many patients waived their right for a hearing for recommitment. Once a patient was there, going back to court was not done, usually. There would be some additional court proceedings but did not think it would be much.

SEN. STONINGTON had the impression that nursing home clients tended to be long term. She asked whether a recommitment was for life or a specified period. **Mr. Anderson** said that was not changed. The first recommitment was for six months and the second and all subsequent ones were for a year. At some point it became a yearly review.

Closing by Sponsor:

SEN. THOMAS said he had many of the same concerns **SEN. STONINGTON** had. The legislative staff person reassured him that the role of the guardian was still a viable thing and was covered under different places in the statute. He said the bill clarified the direct admittance in the statute of continued voluntary and involuntary commitment processes. It was important to note that the bill helped determine that the center was the appropriate place for a person to be. The bill reaffirmed the consistency of the courts that oversees the proper care of the patients. He said he felt very good about the bill and hoped others would too.

HEARING ON HJ 9

Sponsor: **REP. FRANK SMITH, HD 98, Poplar**

Proponents: **Pat Callbeck-Harper, AARP**
Betty Whiting, MT Association of Churches
Sami Butler, Montana Nurses Association

Opponents:

Opening Statement by Sponsor:

REP. FRANK SMITH, HD 98, Poplar, said he was there with a simple resolution brought to him by the Montana Legislation Administration. The bill requested that congress investigate ways of dealing with the price of medications to make them affordable to everyone.

Proponents' Testimony:

Pat Callbeck-Harper, AARP, said they were a nonprofit, nonpartisan organization representing 136,000 members in Montana. In their survey last fall, the number one issue of their members was healthcare coverage and house care issues. Number one in that category was the crisis in prescription drugs. She had just come back from doing a five-city public forum tour in four days. She said that at every forum, all the senior center members talked about needing some help on prescription drug costs. In

AARP's review of the situation, there were several pieces to the resolution of the problem. One was cost containment, which hopefully there would be a bill introduced soon around preferred drug lists. Those lists attacked containment costs. Another was expansion of discount programs. The one piece that was missing was the national attention that Montana was joining other states in saying to congress that a federal and state concerted action was needed.

Betty Whiting, MT Association of Churches, said it was an important resolution. She had three points to make. One, her association was concerned about the prescription drug tier in Montana. DPHHS had recently limited the money spent on prescription drugs for those in Medicaid up to \$250 a month. A typical psycho tropic drug cost around \$358 a month. Some she had talked to who were mentally ill had additional drugs they needed to take besides the psycho tropic drugs. Some of these were for anxiety, asthma, and high blood pressure. Some were spending as much as \$700-\$800 a month. The state used to have a cap at \$600, but because of the cost, it was limited to \$250. This occurred in December so that the department could save three million dollars. It would cost eight or nine million for the biennium if the money could be found to put the money back up to \$600 a month. It was a huge problem for about 4,000 people who were dependent on these drugs across the state. **Ms. Whiting** said the second point she wanted to make was that the United States taxpayer paid for much of the research done on the drugs. One argument was that pharmaceutical companies need to charge so much because they expend so much in the research. She said there was one drug that only took one penny a month, but charged a dollar a day for the drug. Through taxpayers, four million dollars was given to develop a particular drug. She said that currently Columbia University was making \$20 million a year in royalties. The doctor who developed the drug was now a millionaire because of it. There were some iniquities in who was getting the benefits from developing the drugs. The third point was that America was the only industrialized country in the world that was not controlling the cost of prescription drugs. America had the highest drug prices in the world. An example was an ulcer drug that cost \$110 for a month supply in the U.S., cost \$55 in Canada and \$29 in Mexico. She asked why America was not making prescriptions affordable as well. She encouraged support of HJ 9.

Sami Butler, Montana Nurses Association, said the association supported the resolution. She said that personally, numerous patients of hers were brought into intensive care because they either cut their medication in half or went from daily to once a week medication because they could no longer afford them. She made two trips to Turkestan, as part of a her month medical

delegation. There were a couple of scenes that stood out in her mind as she toured healthcare institutions across the country. One institution had most of the patients heavily sedated. The director told her that there were drugs out there that were better for the patients, but that it was just a dream because they were not affordable. She said that scene had haunted her ever since then. She said the U.S. was the most prosperous nation in the world and it was unconscionable to turn it's back on an issue that affected so many people in the state and in the country. She urged for support of HJ 9.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHN ESP, SD 13, Big Timber, asked if there would be opposition to changing the language in the resolution a little bit. It would say, WHEREAS the price of prescription medicine has risen dramatically in recent years and WHEREAS many senior citizens cannot afford to pay for drugs. **REP. SMITH** said it sounded good but did not know what the House would say since they had already changed the whole summary.

SEN. ESP thought the House would like it.

SEN. JOHN BOHLINGER, SD 7, Billings asked what the savings were from reducing the limit for drugs from \$600 to \$250. **Ms. Whiting** said it was caused because there was a \$3 million overrun spending more than could be afforded, so the amount was cut. She was not sure how much the \$3 million would be in savings between now and July 1 in the current budget.

SEN. BOHLINGER asked if it would cost \$4 million to reinstate the \$600 a month limit. **Ms. Whiting** said yes, between \$8 and \$9 million per biennium.

Closing by Sponsor:

REP. SMITH said the resolution was written the way legislation wanted it. After writing it, he went to Delaware and got copies of their prescription drug laws, plus Florida's and California's. He was currently trying to figure out how to work their language into the resolution. Those states won law suits against them from the pharmaceutical companies.

SEN. BOHLINGER said **REP. SMITH's** proposal should be respected and left in its present form. He did not want to complicate it by

amending it and sending it back to the House for approval. He thought what was being attempted was straight forward.

ADJOURNMENT

Adjournment: 3:14 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs46aad)